

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201507492	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/02/2015 1:20 AM	Location of Incident: 44 Barrow Street; 6th Precinct Stationhouse	Precinct: 06	18 Mo. SOL 3/2/2017	EO SOL 3/2/2017	
Date/Time CV Reported Thu, 09/03/2015 3:40 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/03/2015 3:40 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			Unknown
2. POM Colin Sullivan	13597	951309	006 PCT
3. POM James Quirk	20048	951100	006 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Colin Sullivan	Abuse: PO Colin Sullivan stopped § 87(2)(b) and § 87(2)(b) on Barrow Street in Manhattan.	
B.POM James Quirk	Abuse: PO James Quirk stopped § 87(2)(b) and § 87(2)(b) on Barrow Street in Manhattan.	
C.POM Colin Sullivan	Discourtesy: PO Colin Sullivan spoke discourteously to § 87(2)(b) on Barrow Street in Manhattan.	
D.POM Colin Sullivan	Off. Language: PO Colin Sullivan made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b) on Barrow Street in Manhattan.	
E.POM Colin Sullivan	Abuse: PO Colin Sullivan frisked § 87(2)(b) and § 87(2)(b) on Barrow Street in Manhattan.	
F.POM Colin Sullivan	Force: PO Colin Sullivan struck § 87(2)(b) with a baton on Barrow Street in Manhattan.	
G.POM Colin Sullivan	Force: PO Colin Sullivan restricted § 87(2)(b) breathing on Barrow Street in Manhattan.	
H.POM Colin Sullivan	Force: PO Colin Sullivan hit § 87(2)(b) against a vehicle on Barrow Street in Manhattan.	
I. An officer	Abuse: An officer refused to provide his name and shield number to § 87(2)(b) at the 6th Precinct Stationhouse.	
§ 87(4-b) § 87(2)(g)	§ 87(4-b) § 87(2)(g)	
	§ 87(4-b) § 87(2)(g)	

Case Summary

On September 3, 2015, § 87(2)(b) filed the following CCRB complaint via phone on behalf of himself and § 87(2)(b). On the same day, he filed a duplicate complaint with IAB (Board Review 01). The complaint generated original log number 15-25957, which was received at the CCRB on September 10, 2015.

On September 2, 2015, at approximately 1:20 a.m., § 87(2)(b) and § 87(2)(b) were stopped by PO Colin Sullivan and PO James Quirk of the 6th Precinct outside of The Greenwich House of Music, located on 44 Barrow Street in Manhattan (**Allegations A and B**). PO Sullivan allegedly called § 87(2)(b) a “fucking faggot” and stated, “I told you all I wanted was your fucking ID [sic], you fucking faggot,” (**Allegations C and D**). PO Sullivan then frisked § 87(2)(b) and § 87(2)(b) (**Allegation E**). § 87(2)(b) alleged that he was punched on his back from behind; however, the investigation determined that PO Sullivan actually hit § 87(2)(b) back with a baton (**Allegation F**). PO Sullivan also allegedly held onto the back of § 87(2)(b) chain necklace and collar, thereby restricting § 87(2)(b) breathing, and subsequently slammed § 87(2)(b) face onto the hood of the RMP (**Allegations G and H**). § 87(2)(b) was arrested for § 87(2)(b).

§ 87(2)(b) (Board Review 02). § 87(2)(b) did not receive any summonses and was not arrested. § 87(2)(b) was transported via ambulance to § 87(2)(b), where he was diagnosed with chronic back pain and scrapes and bruises around his right eye.

As § 87(2)(b) was exiting the 6th Precinct Stationhouse to be transported to court, he asked the officer transporting him, who remains unknown to the investigation, for his name and badge number, which the officer then allegedly refused to provide (**Allegation I**). Upon his release, § 87(2)(b) returned to the stationhouse to retrieve his property. Two money orders and some jewelry were not returned to him. An IAB spin-off was generated in regards.

This case went beyond the 90-day benchmark § 87(2)(g)

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- On § 87(2)(b), § 87(2)(b) filed a notice of claim with the City of New York, claiming excessive force and discourteous and offensive language. He is seeking five million dollars as redress (Board Review 03). The 50-H hearing is scheduled for § 87(2)(b).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- A NYSID number was unavailable for § 87(2)(b). As a result, his criminal history was not available to the CCRB (Board Review 25).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (Board Review 05 and 27).
- PO Sullivan has been a member of the NYPD for four years. He has had three previous CCRB cases involving six allegations, none of which were substantiated. Two of these past allegations were allegations of force. One was exonerated and the other was administratively closed. § 87(2)(b)
- PO Quirk has been a member of the NYPD for four years. This is the first CCRB complaint filed against him.

Potential Issues

In § 87(2)(b) original complaint, he claimed that his friend, § 87(2)(b) was present for a portion of the incident. He refused to provide § 87(2)(b)'s contact information. Neither PO Sullivan nor PO Quirk made any documentation of § 87(2)(b)'s name or contact information. Searches of CTS, BADS, Lexis Nexis, and CLEAR were performed and yielded no contact information for § 87(2)(b). A call was made to Boots & Saddles, a bar where § 87(2)(b) claimed to have obtained § 87(2)(b)'s name. The manager stated that no one by that name worked there and he did not know who § 87(2)(b) was. The CCRB was therefore unable to reach § 87(2)(b) to obtain a statement.

NYPD Documents and Officer Identification

§ 87(2)(b) stated that while leaving the stationhouse to go to court, he asked PO Sullivan's partner, identified via the investigation as PO Quirk, for his name and shield number, which PO Quirk then refused to provide. On November 10, 2015, a follow-up call was made to § 87(2)(b) during which he confirmed that the officer whose name and shield number he asked for transported him to court (Board Review 21). PO Quirk denied transporting § 87(2)(b) to court, and his memo book confirms that he was no longer working by the time § 87(2)(b) was taken to court (Board Review 06).

The command log stated that § 87(2)(b) was transported to court at 1:30 p.m. (Board Review 08). It listed the van in which he was transported to court, but did not list the officers assigned to the van. The roll call did not list who was assigned to the van, and the daily vehicle assignment sheet stated that no officers were assigned to the van at the time § 87(2)(b) was taken to court (Board Review 09;10). On January 28, 2016, a call was made to the 6th Precinct Integrity Control Officer (ICO) (Board Review 11). Sgt Nicole Gondry, who was working as the Assistant ICO, confirmed that there was no documentation of who was assigned to the van and they were therefore unable to identify the officers. Written confirmation of this was received on February 17, 2016 (Board Review 26). § 87(2)(g)

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g)

Allegation A – Abuse of Authority: PO Colin Sullivan stopped § 87(2)(b) and § 87(2)(b) on Barrow Street in Manhattan.

Allegation B – Abuse of Authority: PO James Quirk stopped § 87(2)(b) and § 87(2)(b) on Barrow Street in Manhattan.

§ 87(2)(b) provided an unsworn phone statement to the CCRB and a statement to IAB on September 3, 2015, and a sworn statement to the CCRB on October 6, 2015 (Board Review 01 and 22). § 87(2)(g) § 87(2)(b) stated that on the night of the incident he was having an asthma attack and sat down on the steps of 44 Barrow Street, to retrieve his asthma pump. He alleged that PO Sullivan approached him and immediately asked for his identification two or three times, during which time § 87(2)(b) tried to explain that he was having an asthma attack. In his phone statement, § 87(2)(b) stated that PO Sullivan asked for § 87(2)(b)'s identification as well. However, in his sworn statement, § 87(2)(b) claimed that § 87(2)(b) had left the location and that § 87(2)(b) was alone when the officers arrived. § 87(2)(b) claimed that his demeanor was unremarkable, though he was out of breath. He provided his identification and was subsequently handcuffed. In his phone statement, § 87(2)(b) stated that PO Sullivan told him he was arrested for trespassing. § 87(2)(b) denied having any contraband on his person. As previously stated, § 87(2)(b) was unavailable to the investigation.

PO Sullivan's and PO Quirk's testimonies were generally consistent (Board Review 23; 24). Both officers stated that they observed § 87(2)(b) and another male, identified via the investigation as § 87(2)(b) sitting with their backs facing the street, on steps which descended to the basement door of a private residential building. They were seated a few feet from the door, and the street was very dark. PO Sullivan stated that the area was known for burglaries, as well as people engaging in public sexual activity and narcotics use, often in stairwells. The officers found it suspicious that the two men were in a dark area near a residential door with their backs to the street. They could not see what, if anything, the men were doing. When asked if there was anything that led PO Sullivan to believe the two men were engaging in a burglary, sexual activity, or narcotics use, PO Sullivan stated that they "seemed to have found the darkest stairwell on the street," which PO Sullivan believed to have been in an effort to conceal whatever they were doing. Both officers stated that they approached § 87(2)(b) and § 87(2)(b) to see what they were doing, determine if they lived on the property, and to determine if they were going to commit a crime, such as breaking and entering. PO Quirk added that they also approached to see if they were trespassing.

PO Sullivan stated that upon approaching the two men, § 87(2)(b) stood up and threw a pack of cigarettes on the ground. PO Sullivan found this suspicious. After both males confirmed that they did not live at the location, PO Sullivan asked for their identification to confirm that they did not live there and to identify the two males. PO Sullivan did not recall there being any indication that either male was carrying weapons, and PO Quirk denied there being any such indication. PO Quirk stated that § 87(2)(b) was calm, and that both males were compliant. PO Sullivan stated that § 87(2)(b) was compliant with providing his identification, but seemed nervous and was evasive in his answers regarding the purpose of him being at the location. § 87(2)(b) did not have his identification, and the officers did not obtain his name.

A search of Google Maps Street View found that The Greenwich School of Music resembles the residential brownstones surrounding it. The stairs leading to the basement doors are not preceded by a gate or any barrier, and there are no obvious signs or indications that individuals are forbidden to sit on the stairs (Board Review 13).

Officers may stop and question an individual to the extent necessary to gain explanatory information when they have reasonable suspicion that the person has committed, is committing, or will

imminently commit a felony or misdemeanor, People v. DeBour, 40 N.Y.2d 201 (1976) (Board Review 12). Penal Law 140.10 defines criminal trespassing in the third degree as knowingly entering or remaining in a building or upon property which is fenced or otherwise enclosed in a manner to exclude intruders, or where there are conspicuous posted rules or regulations governing entry (Board Review 14). Nervousness during a police stop does not give rise to founded suspicion that criminality is afoot, much less reasonable suspicion to believe that a person has committed a crime, People v. Garcia, 20 N.Y.3d 317 (2012) (Board Review 15).

§ 87(2)(g)

Allegation C – Discourtesy: PO Colin Sullivan spoke discourteously to § 87(2)(b) on Barrow Street in Manhattan.

Allegation D – Offensive Language: PO Colin Sullivan made offensive remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b) on Barrow Street in Manhattan.

§ 87(2)(b) alleged that PO Sullivan called him a “fucking faggot” while asking for his identification and repeated this statement throughout the incident. § 87(2)(b) also alleged that PO Sullivan stated, “I told you all I wanted was your fucking ID [sic]...” As previously noted, § 87(2)(b) was unavailable to the investigation.

PO Sullivan and PO Quirk denied making the alleged statements and denied hearing another officer do so. Neither officer recognized § 87(2)(b) from past incidents, and they denied having any knowledge of his sexual orientation.

§ 87(2)(g)

Allegation E – Abuse of Authority: PO Colin Sullivan frisked § 87(2)(b) and § 87(2)(b) on Barrow Street in Manhattan.

§ 87(2)(b) did not allege that he or § 87(2)(b) was frisked; however, PO Sullivan and PO Quirk stated that § 87(2)(b) and another individual, identified as § 87(2)(b) were frisked.

By PO Sullivan’s account, § 87(2)(b) was frisked before the officers determined that he had open warrants and before the crack pipe was recovered, § 87(2)(g)

PO Quirk confirmed that the frisk occurred prior to determining that § 87(2)(b) had warrants, and though he indicated that the crack pipe may have been recovered prior to the frisk, he still

attributed § 87(2)(b) frisk to a fear for weapons and a safety precaution. § 87(2)(g)

§ 87(2)(g)

PO Sullivan stated that he instructed § 87(2)(b) and § 87(2)(b) to stand in front of the RMP and place their hands on the hood. Both males compliantly walked to the RMP and placed their hands on the hood, at which point PO Sullivan frisked § 87(2)(b) and § 87(2)(b) patting down their waistbands, legs, and the exterior of their jackets. Both men were compliant with being frisked and had been generally compliant prior to the frisk. PO Sullivan and PO Quirk stated that PO Sullivan conducted the frisks for the officers' safety and to confirm that the two men were not carrying weapons. PO Sullivan did not recall observing any bulges on § 87(2)(b) and did not recall there being any indication that either male was carrying a weapon. Furthermore, when listing the crimes that frequently occurred in the area, PO Sullivan made no mention of weapons possession. PO Quirk denied observing bulges on either male and denied there being any indication that they may have had weapons. He stated that PO Sullivan did not indicate to him any reason that he believed the men to have weapons.

In order to perform a frisk, an officer must have reasonable suspicion that a person is armed and dangerous, Arizona v. Johnson, 555 U.S. 323 (2009) (Board Review 16).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Allegation F – Force: PO Colin Sullivan hit § 87(2)(b) with a baton on Barrow Street in Manhattan.

§ 87(2)(b) stated that PO Sullivan quickly handcuffed him with no incident, and pulled him to the front of the RMP by his belt and the handcuffs, at which time PO Sullivan forcefully put him over the hood of the RMP and then punched his back with his right hand. § 87(2)(g)

These various uses of force happened in quick succession, and both PO Sullivan and PO Quirk asserted that the baton was used prior to § 87(2)(b) being placed over the hood of the RMP.

§ 87(2)(b) stated that while facing the front of the RMP in handcuffs, PO Sullivan struck the middle of his back near his spine over three times. § 87(2)(b) denied offering any resistance at any point during the incident and stated that he was not even able to move his body because PO Sullivan had full control of him. Though § 87(2)(b) admittedly pleaded guilty to resisting arrest, he explained that while afraid and in pain in court, a public defender advised him to plead guilty and stated that he would be released sooner by doing so. § 87(2)(b) has spinal/cervical stenosis, which he believed was exacerbated by being struck in his back.

After learning that § 87(2)(b) had active warrants, and after finding a glass pipe with crack residue in a box of cigarettes § 87(2)(b) had thrown on the ground, PO Sullivan decided to arrest § 87(2)(b). Both PO Sullivan and PO Quirk stated that prior to being handcuffed, § 87(2)(b) had compliantly walked to the front of the RMP to be frisked, and was not dragged or pulled to the RMP

by any officer. PO Sullivan stated that while § 87(2)(b) was facing the front of the RMP with his hands on the hood, PO Sullivan attempted to handcuff him. He handcuffed § 87(2)(b) left hand quickly, leaving little room for incompletion or resistance from § 87(2)(b). PO Sullivan and PO Quirk stated that before PO Sullivan was able to handcuff his right arm, § 87(2)(b) pulled both arms away from PO Sullivan. One handcuff was still on his left arm at this time. PO Quirk stepped in to assist. He stood to the right of § 87(2)(b) and PO Sullivan stood to the left. The officers stated that § 87(2)(b) repeatedly pulled his elbows forward and backward, elbowing both officers. PO Sullivan stated he was elbowed in the arm at least twice. He claimed that § 87(2)(b) tried to turn around, but that the officers prevented him from doing so. § 87(2)(b) therefore remained up against the front of the RMP with his back facing the officers for the duration of the struggle. Both officers told § 87(2)(b) to stop resisting and to put his hands behind his back, but he did not comply.

PO Sullivan stated that after struggling with § 87(2)(b) for at least 15 seconds, he struck § 87(2)(b) twice in the middle of his back with an extendable baton. PO Quirk believed PO Sullivan struck § 87(2)(b) once or twice. PO Sullivan stated that he did not have a hold of either of § 87(2)(b) arms when he used the baton. He recalled that PO Quirk was doing a good job of controlling § 87(2)(b) right arm, but was unsure if PO Quirk had a hold of § 87(2)(b) right arm when PO Sullivan used the baton. Both officers denied using any type of force other than pulling § 87(2)(b) arms prior to the baton being used. PO Sullivan stated that the decision to use his baton was based on his training and experience, and because it was the “closest thing to his right hand.” He added that he was reluctant to use OC Spray because § 87(2)(b) and the officers were in such close quarters, and the officers would likely have been sprayed as well. No additional force was needed after using the baton, and the officers were able to handcuff § 87(2)(b).

§ 87(2)(b) ambulance call report (ACR) stated that he complained that the officers “manipulated” his preexisting back pain. The medical documents from § 87(2)(b) list him as having hyperesthesia (increased physical sensitivity) on his upper back, as well as mild degenerative changes in the spine, and cervical spondylosis. He was diagnosed with chronic back pain. Spondylosis is described as spinal degeneration and can commonly lead to stenosis (Board Review 20). § 87(2)(b) records from § 87(2)(b) confirm that he had been diagnosed with cervical stenosis and severe chronic pain prior to this incident.

Patrol Guide Procedure 203-11 authorizes officers to use the minimum amount of force necessary to enforce compliance with a lawful order and overcome resistance to affect an arrest (Board Review 19).

§ 87(2)(g)

Allegation G – Force: PO Colin Sullivan restricted § 87(2)(b) breathing on Barrow Street in Manhattan.

Allegation H – Force: PO Colin Sullivan hit § 87(2)(b) against a vehicle on Barrow Street in Manhattan.

It is undisputed that PO Sullivan placed § 87(2)(b) upper body against the officers' RMP during the course of his arrest.

§ 87(2)(b) stated that while standing in front of the RMP in handcuffs, PO Sullivan held onto the back of § 87(2)(b) shirt collar and gold chain necklace with his left hand, thus restricting § 87(2)(b) breathing, and slammed § 87(2)(b) body forward over the RMP, causing the right side of his face to hit the hood of the RMP. During his CCRB interview, § 87(2)(b) initially stated that his head was only slammed against the RMP once. His attorney, § 87(2)(b), interjected and asked § 87(2)(b) if his head was hit against the RMP more than once, to which § 87(2)(b) replied that his head was slammed against the RMP twice. § 87(2)(b) denied offering any resistance, and as stated above, claimed he was unable to move his body in any way because PO Sullivan had full control of him. PO Sullivan allegedly continued to hold § 87(2)(b) collar and chain, restricting § 87(2)(b) breathing for approximately five minutes. § 87(2)(b) then lost consciousness. In his unsworn phone statement, he claimed not to have lost consciousness until he got to the 6th Precinct Stationhouse. He was not sure exactly what caused him to do so, but believed it was a combination of his asthma attack and the trauma from the police incident. § 87(2)(b) did not mention having lost consciousness in his statement to IAB. § 87(2)(b) was consistent throughout his statements to IAB and the CCRB in that the right side of his face made contact with hood of the RMP, and that he sustained scrapes above his right eye and swelling to the right side of his face as a result.

Though the officers claimed that § 87(2)(b) offered significant physical resistance prior to being struck with a baton, PO Quirk stated that after being struck with the baton, § 87(2)(b) was compliant and the officers were able to get his hands behind his back to handcuff him. He claimed that no additional force was needed after § 87(2)(b) was struck with the baton. PO Quirk stated that while handcuffing § 87(2)(b) § 87(2)(b) arms were lifted, pushing his torso downward so his chest was against the RMP. PO Quirk could not recall whether § 87(2)(b) face ever made contact with the vehicle. He denied slamming § 87(2)(b) onto the RMP, and did not see PO Sullivan do so.

PO Sullivan stated that hitting § 87(2)(b) with the baton significantly weakened him and made him more compliant, allowing him to be handcuffed, but that once handcuffed, he still tried to "kind of" push himself away from the car. PO Sullivan stated that after handcuffing § 87(2)(b) he pushed § 87(2)(b) left shoulder down, bending him forward over the hood of the RMP with his chest against the hood. PO Sullivan stated he did this to maintain control of § 87(2)(b) while searching him. He confirmed that § 87(2)(b) face made contact with the hood of the RMP, but stated that by no means did officers purposely slam § 87(2)(b) face onto the hood. PO Sullivan denied grabbing § 87(2)(b) collar or chain, and PO Quirk did not see him do so. Neither officer claimed to have observed any injuries to § 87(2)(b) face, and they did not hear him complain of such injuries. Neither PO Quirk nor PO Sullivan offered any other instance during the incident in which § 87(2)(b) could have sustained facial injuries. PO Sullivan acknowledged that after being handcuffed, § 87(2)(b) claimed he could not breathe, but PO Sullivan stated that § 87(2)(b) was screaming as loudly as he could and making numerous other statements unrelated to any injury. Both officers denied hearing § 87(2)(b) make any mention of an asthma attack, and both officers agreed that § 87(2)(b) did not lose consciousness.

§ 87(2)(b) arrest photo shows a red mark below his right brow, bruising and swelling near the crease of his right eyelid, and slight swelling and redness to the right side of his forehead (Board Review18). § 87(2)(b) ACR states that his chief complaint was, "I was having trouble breathing," and states that he complained of officers having "roughed" him up, causing his head wound. The report states that he denied loss of consciousness, however, his records from § 87(2)(b) state that he complained of having lost consciousness. The ACR notes that he had an abrasion(s) and swelling to the

right side of his head, and that he has asthma. § 87(2)(b) was diagnosed with right supraorbital and periorbital contusions which did not require stitches.

§ 87(2)(g)

NYPD Patrol Guide Procedure 203-11 authorizes officers to use the minimum amount of force necessary to overcome resistance to affect an arrest (Board Review 19).

It is undisputed that PO Sullivan bent § 87(2)(b) over the hood of the RMP, and PO Sullivan confirmed that in doing so, § 87(2)(b) face made contact with the hood of the RMP.

§ 87(2)(g)

§ 87(2)(g)

Allegation I – Abuse of Authority: An officer refused to provide his name and shield number to § 87(2)(b) at the 6th Precinct Stationhouse.

§ 87(2)(b) stated that while leaving the stationhouse to go to court, he asked the officer who was transporting him for his name and shield number. § 87(2)(b) alleged that the officer refused to provide his name or shield number to him, stating that he did not need to give that information to § 87(2)(b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Squad: 7

Investigator:	_____	<u>Liliana Manuel</u>	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date